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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/719,076	11/21/2003	D. David Roberts	6045-006	2264

7590

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EXAMINER

CHIN, PAUL T

ART UNIT

PAPER NUMBER

3652

DATE MAILED: 11/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/719,076	<b>Applicant(s)</b> ROBERTS, D. DAVID	
	<b>Examiner</b> PAUL T. CHIN	<b>Art Unit</b> 3652	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 16 August 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 9 and 15-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 9 and 15-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 April 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

1. Applicant's amendment filed August 18, 2006, and the arguments presented therewith have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, the arguments are moot in view of a new ground(s) of rejection. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL.**

#### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 9, 16, and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Stichter (228,692).

Stichter (228,692) discloses a scooping device comprising a substantially planar base (F) having an open end, first and second lateral side walls ( $E^2$ ,  $E^1$ ) extending upwardly along opposing first and second lateral sides of the planar base and an arcuate member (A,G), which can be considered as a handle, formed by a rearwardly extending projection integral with the planar base (F) and curved upwardly from the planar base and generally forwardly toward the open end in an arcuate manner forming a continuous curve from the planar base, the arcuate handle (A) forming a generally tubular configuration having a generally circular transverse cross-section, wherein said arcuate handle (G) further comprises a terminating end edge (see Fig. 2) in a closed position, the terminating end edge being *generally rearwardly* and *generally downwardly facing* and being positioned proximate the planar base (see Fig. 2), thereby forming a

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substantially closed cylinder having bounded and open ends thereof, wherein said open ends are substantially covered by the first and second lateral side walls (E<sup>1</sup>). Note that Stichter (228,692) shows a C-shape handle (D), but the arcuate handle (A) is capable of being held by a user's hand without the handle (D) for gripping the device.

Re claim 16, figure 2 shows each lateral side wall having a rearwardly extending flange (E<sup>1</sup>) having a radius substantially corresponding to the curvature of the arcuate handle thereby enclosing the lateral open ends of the arcuate handle.

Re claim 17, figures 1 and 2 also show each lateral side wall upper edges which taper forward from the rearwardly extending flange (see Fig. 2) and which is co-terminus with the open end of the planar base (see Fig. 2).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stichter (228,692) in view of Brownell (6,234,549) (see PTO-892)..

Stichter (228,692), as presented in section 3 above, does not show that the material selection on the device is stainless steel. However, Brownell (6,234,549) teaches a scooping device having a blade being made of a stainless steel (Col. 7, lines 63-65 and claim 17) to prevent corrosion. Accordingly, it would it would have been obvious to those skilled in the art to make the Stichter's device (228,692) to be made of stainless steel as taught by Brownell (6,234,549) to prevent corrosion.

***Response to Arguments***

6. Applicant's arguments with respect to claims 9 and 15-17 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

8. Applicant's amendment (the addition of new structural limitations in claim 9 in combination with other structural limitations) necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **PAUL T. CHIN** whose telephone number is (571) 272-6922. The examiner can normally be reached on **MON-THURS (7:30 -6:00 PM)**.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, EILEEN LILLIS can be reached on (571) 272-6928. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



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